

ESTTA Tracking number: **ESTTA701035**

Filing date: **10/08/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Sazerac Brands, LLC		
Entity	Corporation	Citizenship	Delaware
Address	10400 Linn Station Road Suite 300 Louisville, KY 40223 UNITED STATES		

Attorney information	Thomas M. Hadid Cooley LLP 1299 Pennsylvania Ave., NW Suite 700 Washington, DC 20004 UNITED STATES trademarks@cooley.com, thadid@cooley.com, pwillsey@cooley.com, vbadolato@cooley.com Phone:6508497007
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### Applicant Information

Application No	86561238	Publication date	09/08/2015
Opposition Filing Date	10/08/2015	Opposition Period Ends	10/08/2015
Applicant	Graupar, S.a. Rua Minas Gerais, 64 Centro Itapeva, BRAZIL		

### Goods/Services Affected by Opposition

Class 033. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Cachaca; Rum

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3166729	Application Date	07/15/2005
Registration Date	10/31/2006	Foreign Priority Date	NONE
Word Mark	CHERRY WAVE		

Design Mark	<b>CHERRY WAVE</b>
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2006/02/01 First Use In Commerce: 2006/02/01 alcoholic beverages, namely cherry flavored vodka

U.S. Registration No.	3463084	Application Date	12/19/2006
Registration Date	07/08/2008	Foreign Priority Date	NONE
Word Mark	PURPLE WAVE		
Design Mark	<b>PURPLE WAVE</b>		
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2007/05/03 First Use In Commerce: 2007/05/03 Alcoholic beverages, namely, flavored vodka		

U.S. Registration No.	4334914	Application Date	10/03/2012
Registration Date	05/14/2013	Foreign Priority Date	NONE
Word Mark	WAVE		

Design Mark	
Description of Mark	The mark consists of the stylized capital letters "W, A, V, and E", all arranged vertically.
Goods/Services	Class 033. First use: First Use: 2011/06/00 First Use In Commerce: 2011/06/00 Vodka

U.S. Registration No.	4773664	Application Date	01/13/2014
Registration Date	07/14/2015	Foreign Priority Date	NONE
Word Mark	HEAT WAVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2014/11/17 First Use In Commerce: 2014/11/17 Distilled Spirits		

Attachments	78671210#TMSN.png( bytes ) 77067105#TMSN.png( bytes ) 85744647#TMSN.png( bytes ) 86164205#TMSN.png( bytes ) Sazerac NOO re LIQUID WAVE.pdf(22113 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Thomas M. Hadid/
Name	Thomas M. Hadid
Date	10/08/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 86/561,238  
For the Trademark LIQUID WAVE  
Published in the *Official Gazette* on September 8, 2015

SAZERAC BRANDS, LLC,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
GRAUPAR, S.A.,	)	
	)	
Applicant.	)	
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**NOTICE OF OPPOSITION**

Opposer Sazerac Brands, LLC (“Sazerac”), a Delaware limited liability company having its principal place of business at 10400 Linn Station Road, Suite 300, Louisville, Kentucky 40223, will be damaged by the issuance of a registration for the mark LIQUID WAVE (the “Applicant’s Mark”), as applied for in Application Serial No. 86/561,238, filed on March 11, 2015, by Applicant Graupar, S.A, a Brazilian “sociedad anonima” with a mailing address of Rua Minas Gerais, 64 Centro, Itapeva, Brazil (“Applicant”).

As grounds for opposition, Sazerac alleges as follows.

1. Sazerac, through its parent company, Sazerac Company, Inc. (“SCI”), markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys, tequilas, and specialty liqueurs. SCI has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

Sazerac owns the following United States trademark registrations and application:

CHERRY WAVE (U.S. Reg. No. 3,166,729), issued on October 31, 2006, for “alcoholic beverages, namely cherry flavored vodka”;

PURPLE WAVE (U.S. Reg. No. 3,463,084), issued on July 8, 2008, “alcoholic beverages, namely, flavored vodka”;

WAVE (Stylized) (U.S. Reg. No. 4,334,914), issued on May 14, 2013, for “vodka”; and,

HEATWAVE (U.S. Serial No. 86/164,205), filed on May 14, 2014, for “distilled spirits

(collectively, Sazerac’s “WAVE Marks”).

2. Since at least as early as June 2011, SCI has promoted and sold in commerce WAVE-branded alcoholic beverage products. By virtue of its efforts and the excellence of the underlying products, the public has come to know, rely on, and recognize Sazerac’s WAVE Marks as source identifiers for SCI’s alcoholic beverage products. Sazerac has gained valuable reputation and a substantial amount of goodwill through the use and recognition of its Marks.

3. On March 11, 2015, Applicant filed an application to register the mark LIQUID WAVE on an intent-to-use basis in connection with “Cachaca; Rum.”

4. Sazerac’s WAVE Marks have priority through use in commerce and/or filing dates that predate Applicant’s filing date of March 11, 2015.

5. The alcoholic beverage products offered under Applicant’s Mark are likely to be confused with and mistaken for Sazerac’s alcoholic beverages marketed under its WAVE Marks because Applicant’s Mark is similar to Sazerac’s WAVE Marks in sight, sound, meaning, and commercial impression.

6. Applicant’s Mark is intended for use in connection with products that overlap with and are related to products SCI offers under Sazerac’s WAVE Marks, namely alcoholic beverages and distilled spirits.

7. Applicant's targeted customer base overlaps with the consumers of SCI's alcoholic beverages.

8. As Applicant's goods description contains no restrictions or limitations as to Applicant's channels of trade, Sazerac may assume that Applicant's Mark, like Sazerac's WAVE Marks, will be used in all accepted channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for its alcohol-based products overlap with channels of trade used by SCI in marketing, selling, and otherwise distributing its alcohol-based products marketed under Sazerac's WAVE Marks.

9. If Applicant is permitted to register Applicant's Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would likely occur. Persons familiar with Sazerac's WAVE Marks would likely perceive Applicant's products as associated or affiliated with or sponsored by Sazerac when they are not.

10. Sazerac's customers and the relevant public are likely to misapprehend Applicant's Mark as a Sazerac mark rather than a mark of Applicant and/or believe in error that goods offered under the Applicant's Mark are offered by, in association with, or under license from Sazerac or SCI.

11. Any defect, objection to, or fault found with Applicant's goods marketed under Applicant's LIQUID WAVE mark would necessarily reflect on and injure the reputation that Sazerac has established for its alcoholic beverage products.

12. Registration of Applicant's Mark would give Applicant *prima facie* evidence of the validity and ownership of Applicant's Mark and of Applicant's exclusive right to use Applicant's Mark, all to the detriment of Sazerac.

13. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 86/561,238 be denied and refused registration.

COOLEY LLP

Date: October 8, 2015

By: /s/ Thomas M. Hadid  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 8 2015, I mailed the foregoing NOTICE OF OPPOSITION regarding *Sazerac Company, Inc. v. Graupar, S.A.* to correspondent for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Mr. David A. Weinstein  
695 South Colorado Boulevard, Suite 360  
Denver, Colorado 80246-8094

Date: October 8, 2015

By: /s/ Thomas M. Hadid  
Thomas M. Hadid